

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO: _____

PRISCILLA MOYA;
KELLY WRIGHT;
KELLEY R. ANDERSON;
WILLEMAE FRANKLIN;
CYNTHIA K. OPTHOF;
MICHAEL P. DAVIS;
PATRICIA FADOUL; and
DANIELLE ZICK-BELLOIS,

Plaintiffs,

-v-

THE UNITED STATES DEPARTMENT
OF EDUCATION; *and*
MARIA-TERESA CUEVA *in her official*
capacity as FOIA PUBLIC LIAISON,

Defendants.

COMPLAINT

The Plaintiffs for their Complaint against the Defendants alleges as follows:

PARTIES

1. The Plaintiff PRISCILLA MOYA ("Plaintiff MOYA") is an individual who is the subject of debt collection on a federal student loan.
2. The Plaintiff KELLY WRIGHT ("Plaintiff WRIGHT") is an individual who is the subject of debt collection on a federal student loan.

3. The Plaintiff KELLEY R. ANDERSON (“Plaintiff ANDERSON”) is an individual who is the subject of debt collection on a federal student loan.

4. The Plaintiff WILLEMAE FRANKLIN (“Plaintiff FRANKLIN”) is an individual who is the subject of debt collection on a federal student loan.

5. The Plaintiff CYNTHIA K. OPTHOF (“Plaintiff OPTHOF”) is an individual who is the subject of debt collection on a federal student loan.

6. The Plaintiff MICHAEL P. DAVIS (“Plaintiff DAVIS”) is an individual who is the subject of debt collection on a federal student loan.

7. The Plaintiff PATRICIA FADOUL (“Plaintiff FADOUL”) is an individual who is the subject of debt collection on a federal student loan.

8. The Plaintiff DANIELLE ZICK-BELLOIS (“Plaintiff BELLOIS”) is an individual who is the subject of debt collection on a federal student loan.

9. The Plaintiffs in this action shall be referred to as “Plaintiffs” when the activities and allegations described include all Plaintiffs. Otherwise each individual shall be identified as “Plaintiff NAME”.

10. The Defendant UNITED STATES DEPARTMENT OF EDUCATION (“Defendant DOE”) is an agency of the United States Government.

11. The Defendant MARIA-TERESA CUEVA (“Defendant CUEVA”) is the FOIA PUBLIC LIAISON and is being sued in her Official Capacity.

12. Defendant DOE and Defendant CUEVA shall be collectively referred to as “Defendants”.

JURISDICTION AND VENUE

13. This action arises out of the Freedom of Information Act, 5 U.S.C. §552 and 34 C.F.R. §5.20(a)-(d). Therefore, this Court has jurisdiction pursuant to 5 U.S.C. §552a. (g)(5) and because the Defendants’ agency action was directed at the Southern District of Florida, venue is appropriate in this district.

GENERAL ALLEGATIONS

14. The Freedom of Information Act, 5 U.S.C. §552 as amended requires among other things that each agency separately state and currently publish in the Federal Register for the guidance of the public the methods whereby the public may obtain information, make submittals or requests. The Freedom of Information Act, 5 U.S.C. §552(a)(1)(A). (Emphasis added as to the “Federal Register”).

15. In addition to the requirement that each agency publish in the Federal Register the manner in which the public may obtain information, each agency, upon any request for records which reasonably describes such records; and is made in accordance with *published rules* stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any

person. The Freedom of Information Act, 5 U.S.C. §552(a)(3)(A). (Emphasis added as to “published rules”).

16. The Defendant DOE published in the Federal Register the manner in which the public may obtain information.

17. Any Freedom of Information Act Request for an agency record from the Defendant DOE must be in writing and transmitted to the Department as indicated on the Department’s Web website that resolves at the uniform resource locator (“URL”): http://www.ed.gov.policy/gen/leg/foia/request_foia.html. 34 C.F.R. §5.20.

18. The URL http://www.ed.gov.policy/gen/leg/foia/request_foia.html contains no requirement that a signature is required in a written or pen & ink signature, for the option to send a request via email or facsimile is available.

19. The cost of a college education is rising faster than the cost of medical care and as much as three times as fast as consumer prices in general. Americans now owe more on their student loans than they do on their credit cards — a debt fast approaching \$1 trillion with no end in sight.

20. For a growing number of graduates, though, it's not working out — especially in an economy where well-paying jobs for college graduates are in short supply. Student loan defaults have doubled in the last five years, according to the Defendant DOE, and are now approaching nearly a quarter-million defaults a year.

21. "The schools keep the money, the students keep the debt, and the taxpayers lose," said Sen. Tom Harkin, D-Iowa, who chairs the Senate Education Committee. "There's a lot of similarities between what's happening with student loans ... and the housing crisis."

22. Unlike most other forms of debt, student loans carry almost no consumer protections and little ability to refinance. By law, they can't be wiped out in bankruptcy. Those laws were passed in response to the last student loan crisis in the 1980s. Coupled with the above, student loan fraud is being reported by graduates.

23. The most prevalent fraud involves the relationship between some Universities and originators. In this type of fraud, the University or Trade School makes deals with originators. The school will then steer students to pick one of several originators. The originator in return gives the schools, or the school administrators, kickbacks in the form of cash, gifts or vacations.

24. What this does in effect is rob the Student of choosing their own loan originator. There are thousands of loan originators, however many schools will steer you into picking from a couple. Many times these are on a "preferred list" that the school puts out.

25. The Defendant DOE does provide statutory discharges (cancellations) of student loans (20 U.S.C. §1087). The main way to discharge or cancel a student loan through the Higher Education Act (HEA) are:

- a. The school's false certification of the student's eligibility, including false certification due to forgery or identity theft;
- b. The school's failure to pay a refund owed to a student; and
- c. Unauthorized signatures and forged endorsements.

26. Because many student loans were originated 4-10 years prior to payments being required, document requests directed at the Defendant DOE, SallieMae, and the Universities themselves are crucial.

27. The Plaintiffs' requests for information directed at the Universities attended as of today's date have been ignored.

28. The Plaintiffs are diligently attempting through counsel to obtain an accounting and financial records evidencing the disbursements, credits and debits associated with federal student loans taken out in their names and appearing on their consumer credit reports. Unfortunately, Plaintiffs' attempts have been unsuccessful.

29. On March 7, 2011 Plaintiff BELLOIS served a Freedom of Information Act request on the Defendant DOE that complied with the provisions published in the Federal Register by the Department of Education.

30. On March 7, 2011 Plaintiff FADOUL served a Freedom of Information Act request on the Defendant DOE that complied with the provisions published in the Federal Register by the Department of Education.

31. On March 7, 2011 Plaintiff DAVIS served a Freedom of Information Act request on the Defendant DOE that complied with the provisions published in the Federal Register by the Department of Education.

32. On April 5, 2011 Plaintiff MOYA served a Freedom of Information Act request on the Defendant DOE that complied with the provisions published in the Federal Register by the Department of Education.

33. On May 17 Plaintiff OPTHOF served a Freedom of Information Act request on the Defendant DOE that complied with the provisions published in the Federal Register by the Department of Education.

34. On May 17, 2011 Plaintiff FRANKLIN served a Freedom of Information Act request on the Defendant DOE that complied with the provisions published in the Federal Register by the Department of Education.

35. On May 17, 2011 Plaintiff ANDERSON served a Freedom of Information Act request on the Defendant DOE that complied with the provisions published in the Federal Register by the Department of Education.

36. On May 18, 2011 Plaintiff WRIGHT served a Freedom of Information Act request on the Defendant DOE that complied with the provisions published in the Federal Register by the Department of Education.

37. On June 13, 2011 Defendant CUEVA deemed the requests served by Defendants MOYA, OPTHOF, FRANKLIN, ANDERSON, and WRIGHT was insufficient because the signature was not in a written or pen & ink according to: http://www2.ed.gov/policy/gen/leg/foia/pa_statement.html.

38. Notwithstanding the fact that a request is insufficient if and only if the request does not reasonably describe the agency records sought, there is no such requirement published in the Federal Register regarding “pen” or “ink” and the URL: http://www2.ed.gov/policy/gen/leg/foia/pa_statement.html makes no mention of “pen” or “ink”.

39. The Defendants failed to respond to the requests served by Defendants BELLOIS, FADOUL and DAVIS.

40. The Defendants are in violation of 5 U.S.C. §§552 & 552a, and 34 C.F.R. §§5.20 & 5.21.

41. 5 U.S.C. §552(a)(4)(B) provides that the Court may enjoin an agency from withholding agency records and order the production of improperly held agency records.

42. 5 U.S.C. §552a(g)(1)(B) to (2) provides that an individual may bring a civil action against an agency that refuses to comply with the individual's request under 5 U.S.C. §552a(d)(1), and that the Court may order the agency to produce the requested documents.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request judgment in their favor and against the Defendants as follows:

A. An order directing the Defendants to deliver to Plaintiffs copies of the records set forth in Exhibit A;

B. Plaintiff's litigation costs and attorney's fees pursuant to 5 U.S.C. §§552(a)(4)(E) & 552a(g)(3)(B), and other applicable law; and

C. An order prohibiting the Defendants, their agents and anyone working in conjunction with them from engaging in any debt collection until such time as the agency records have been delivered; and

D. Such other relief as this Court deems just and proper.

Dated: 6-24-11

THE DELTA LAW FIRM

By: 

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